



Legal Update

April 11, 2013

Searching Exterior of Homes with Drug Detection Dogs

Police cannot use a drug detection dog to sniff the exterior of a home without a warrant because it constitutes a search.

***Florida v Jardines*, No. 11-564, 2013 BL 79684 (U.S. March 26, 2013)**

Background: In 2006, police in Florida received an unverified tip that marijuana was being grown in the home of the defendant, Jolies Jardines (hereinafter referred to as “Jardines”). The Florida police collaborated with the Department and the Drug Enforcement Administration to conduct surveillance of Jardines’ home. As part of the surveillance, the police brought a drug detection dog that was “trained to detect the scent of marijuana, cocaine, heroin, and several other drugs to Jardines’ home. The dog alerted its handler that it detected contraband through its behavioral changes. The dog’s handler brought testified that the dog had a tendency to dart around erratically while searching for contraband. As the dog approached Jardines' front porch, it "began tracking that airborne odor by . . . tracking back and forth," engaging in what is called "bracketing," "back and forth, back and forth." *Id.* After sniffing the base of the front door, the dog sat, which is the trained behavior upon discovering the odor's strongest point. After observing the dog’s behavior, the police applied for a warrant to search the residence. The police recovered marijuana plants and charged Jardines with trafficking marijuana. Jardines filed a motion to suppress at trial arguing that the use of the drug detection dog was an unreasonable search.

Conclusion: The Supreme Court in *Jardines* held that the government's use of trained police dogs to investigate the home and its immediate surroundings is a "search" within the meaning of the Fourth Amendment. The court determined that the front porch is part of the home itself for Fourth Amendment purposes. "Entering a person's porch for the purposes of conducting a search requires a broader license than the one commonly given to the general public. Without such a license, the police officers were conducting an unlawful search in violation of the Fourth Amendment." While the general public, including the police, generally have license to approach a house's front door (for example, to leave a flier or ask the occupant to answer a question), that license does not include an invitation to bring a dog onto the porch to search for drugs.

Commentary: The *Jardines* decision reaffirms that people have an expectation of privacy at their home and that using a drug detection dog to sniff the exterior of the home is a search and would require a warrant. Additionally, the *Jardines* decision serves as an excellent review of what areas police can search surrounding a home. The court in *Jardines* limits the police from using a drug detection dog in the area surrounding the home including the front porch. Similar to the *Kyllo* case, where the court held that the using thermal imaging equipment to detect whether drugs were growing inside a home, police are prohibited from using a drug detection dog to sniff the exterior of the house for drugs.